

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

FRANK SHANNON,)	
)	
Plaintiff,)	
)	
v.)	No. 4:22-CV-253 RLW
)	
DOLLAR TREE STORES, INC.,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter is before the Court on Wanda L. Shannon's Verified Motion to Substitute Plaintiff. (ECF No. 21). Defendant Dollar Tree Stores, Inc. has not filed a response and the time to do so has passed. The Court will grant the motion for the reasons below.

Background

In his complaint, Plaintiff alleges that the manager of a Dollar Tree store falsely insinuated that Plaintiff was attempting to steal merchandise. (ECF No. 8 at ¶¶ 4-5). Plaintiff asserts that the manager's statements were defamatory and slanderous. *Id.* at ¶ 10. Plaintiff seeks actual and punitive damages. *Id.* at ¶ 16.

Plaintiff died on December 1, 2022. (ECF No. 18). Plaintiff's counsel filed a Suggestion of Death five days later. *Id.* On February 15, 2023, Plaintiff's sister, Ms. Shannon, filed her Verified Motion to Substitute Plaintiff. (ECF No. 21). No other person or entity has moved for substitution.

Discussion

Under Rule 25(a) of the Federal Rules of Civil Procedure, the Court may order substitution of a proper party if the original party dies and the claim is not extinguished. Fed. R. Civ. P. 25(a).

A motion for substitution may be filed by any party or by the decedent's successor or representative within 90 days of service of a statement noting the death of the party. *Id.*

It is well-settled that federal courts sitting in diversity jurisdiction must apply federal law for matters of procedure and state law for matters of substance. *In re Baycol Prod. Litig.*, 616 F.3d 778, 785 (8th Cir. 2010) (citation omitted). Rule 25(a) is a procedural rule that governs the proper method for the substitution of parties. *Id.* But the Court must look to state law to determine whether Ms. Shannon is a proper party and whether Plaintiff's defamation claim survives. *Id.* at 787-88.

Proper Party

Under Rule 25(a)(1), the proper party for substitution is the decedent's successor or representative. Fed. R. Civ. P. 25(a); *see also In re Baycol Prod. Litig.*, 616 F.3d at 782-83. The use of the term "successor" indicates "that a person may be substituted as a party even though the person has not been formally appointed as a representative or administrator." 6 James Wm. Moore et al., *Moore's Federal Practice*, § 25.12[3] (3d ed. 2022). A "successor" may be "the primary beneficiary of an unprobated intestate estate which need not be probated[.]" *In re Baycol Prod. Litig.*, 616 F.3d at 785.

Under Missouri law, if there is no surviving spouse, all intestate property goes to the decedent's children. Mo. Rev. Stat. § 474.010. If the decedent has no children, the intestate property goes to decedent's father, mother, brothers, and sisters, or their descendants, in equal parts. *Id.*

Ms. Shannon is Plaintiff's sister. (ECF No. 21). She asserts that Plaintiff never married or had children. *Id.* at ¶ 4. She states that Plaintiff died intestate and no probate action is currently pending. *Id.* at ¶¶ 2-3. Ms. Shannon further states that Plaintiff's parents are deceased. *Id.* at ¶ 5. Plaintiff is survived only by Ms. Shannon and Erina Sharron, Plaintiff's other sister. *Id.* at ¶ 7.

Based on this information, the Court finds that Ms. Shannon is Plaintiff's successor and a proper party for substitution in this matter.

Survival of the Claim

Under Missouri common law, tort claims do not survive the death of the plaintiff. *Manson v. Wabash R. Co.*, 338 S.W.2d 54, 57 (Mo. banc 1960) (citation omitted). But under Mo. Rev. Stat. § 537.020.1, “[c]auses for personal injuries, other than those resulting in death . . . survive to the personal representative of such injured party[.]” Thus, the Court finds that Plaintiff's defamation claim is not extinguished.


Conclusion

Ms. Shannon is a proper party for substitution and Plaintiff's death did not extinguish his defamation claim.

Accordingly,

IT IS HEREBY ORDERED that Wanda L. Shannon's Verified Motion to Substitute Plaintiff is **GRANTED**. (ECF No. 21).

IT IS FURTHER ORDERED that the Clerk of the Court shall substitute Wanda L. Shannon for Frank Shannon as the plaintiff in this action.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Dated this 11th day of April, 2023.